

STATE BOARD OF EDUCATION

STATE OF GEORGIA

IN RE: JOHN S.

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CASE NO. 1981-7

O R D E R

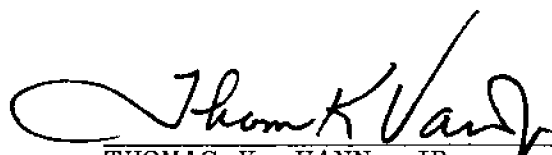
THE STATE BOARD OF EDUCATION, after due consideration of the record submitted herein and the report of the Hearing Officer, a copy of which is attached hereto, and after a vote in open meeting,

DETERMINES AND ORDERS, that the Findings of Fact and Conclusions of Law of the Hearing Officer are made the Findings of Fact and Conclusions of Law of the State Board of Education and by reference are incorporated herein, and

DETERMINES AND ORDERS, that the decision of the regional hearing officer herein appealed from is hereby sustained.

Mr. McClung was not present.

This 12th day of February, 1981.


THOMAS K. VANN, JR.
Vice Chairman for Appeals

STATE BOARD OF EDUCATION
STATE OF GEORGIA

IN RE: JOHN S. : CASE NO. 1981-7
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: REPORT OF
: HEARING OFFICER

This is an appeal from the decision of a regional hearing officer's decision concerning the special education placement of John S. (hereinafter "Student"). The Regional Hearing Officer decided that the Laurens County School System (hereinafter "Local System") was not required to provide the Student with speech therapy because he was under five years of age.¹ The Hearing Officer recommends that the decision of the Regional Hearing Officer be sustained.

The Student has a severe speech articulation disorder.² During the 1979-1980 school year, he received speech therapy for thirty (30) minutes per day twice a week from 3:00 p.m. to 3:30 p.m. at a local school from the speech therapist employed by the Local System. The Student was not enrolled in the school, but the director of special education was aware that he was receiving therapy. The Student made some progress while working with the speech therapist. Services were discontinued in May, 1980, when the school year ended. The Student's parents attempted to enroll him in speech

¹ The Student was born on February 25, 1977.

² In addition to his speech disorder, the Student has been diagnosed as being hyperactive.

therapy for the 1980-81 school year, but their request was denied by the local superintendent and the Laurens County Board of Education (hereinafter "Local Board") after consultation with representatives from the Georgia Department of Education. The denial of services was based on the Student's age.

The Student's parents filed suit in the federal district court in an effort to obtain services. The federal judge entered an order on December 18, 1980 that the Student's parents needed to follow the administrative procedures of Public Law 94-142 (20 U.S.C. §§1412-1415) and directed the Local System and other named defendants to expedite the administrative process. An individualized education program was prepared for the Student on January 12, 1981; a hearing was conducted by the Regional Hearing Officer on January 13, 1981; the Regional Hearing Officer's decision was issued on January 23, 1981; the Local Board accepted the decision on February 5, 1981, and an appeal was filed by the Student's parents with the State Board of Education on February 10, 1981.

The Student's parents contend the Local System is required to provide services to the Student because of the provisions of Ga. Code Ann. §32-605a (Ga. Laws 1974, pp. 1045, 1047, as amended), which states, in part:

"All children and youth who are eligible for the general education program, preschool education, or who have special educational needs and three and four year old children who are either physically, mentally, or emotionally handicapped or perceptually or linguistically deficient shall also be eligible for special education services.

Children, ages 0 - 5 years, whose handicap is so severe as to necessitate early education intervention may be eligible for special education services..." (Emphasis added).

The Student's parents contend that the federal regulations issued pursuant to Public Law 94-142 provide that a state shall insure "that a free appropriate public education is available for all handicapped children aged three through twenty-one...." 45 C.F.R. §121a.122(a). An exception is set forth in 45 C.F.R. §121a.122(c), which provides:

"The requirement in paragraph (a) of this section does not apply to a State with respect to handicapped children aged three, four, five, eighteen, nineteen, twenty, or twenty-one to the extent that the requirement would be inconsistent with State law or practice...respecting public education for one or more of those age groups in the State."

The Local Board pointed out that the Georgia Special Education Annual Program Plan for fiscal year 1980, which was approved by the United States Department of Education, provided that services did not have to be provided to three and four year old children. The Student's parents argued that the Annual Program Plan misquoted Ga. Code Ann. §32-605a by substituting the word "may" for the word "shall" in the phrase "3 and 4 year old children . . . shall also be eligible for special education services....". The Regional Hearing Officer held that:

"Petitioners are correct in stating that the FY 1980 State Plan approved by the U.S. Department of Education misquotes Georgia Code Annotated §32-605a; however, the FY 1980 State Plan is clear. This child of 3 years and 11 months chronological age is not eligible for enrollment in the local school system."

On appeal to the State Board of Education, the Student's parents argue that the statute is controlling over the Annual Program Plan, and that if the statute is followed, the Local System is required to provide the Student with services since he is a three year old who is linguistically deficient.

The Hearing Officer is of the opinion that even if Ga. Code Ann. §32-604a is followed, the Local System is not required to provide services for the Student. Without getting into the arguments concerning whether Public Law 94-142 and the Adequate Program for Education in Georgia Act are simply funding laws, the Hearing Officer construes the language of Ga. Code Ann. §32-605a to provide for the eligibility of students to obtain services, but it does not mandate that local school systems must provide the services. The statute simply sets forth the classes of students who are eligible to receive services from a local school system if the local school system establishes services for those classes of students. There is nothing in the Adequate Program for Education in Georgia Act which establishes that a local school system must provide education programs for any class of students. The statute sets forth the purpose of the program by declaring the legislative findings that an adequate education program is beneficial to the welfare of the State (Ga. Code Ann. §32-602a); sets forth the policy of the State to assure that Georgians have access to quality instruction (Section 32-603a); establishes eligibility requirements (Sections 32-604a and 32-605a); provides for a

kindergarten program if funds are appropriated (Sections 32-607c), and provides for the establishment of other programs and the method of State funding assistance for the established programs. The Hearing Officer, therefore, concludes that the Local System must provide services to the Student only if it has established a program for providing special education to three and four year olds.

The Student's parents argue that the Local System is providing services to three and four year olds through the State Department of Human Resources. There was testimony that Child Development Centers are operated by the Department of Human Resources and that the Centers do have behavioral disorder programs for certain classes of three and four year olds. From the testimony presented, it appears that such programs are available only for children whose parents do not have certain income levels. It is clear, however, that the programs provided by the Department of Human Resources in the Child Development Centers are not under the control of the Local Board or the State Board of Education, nor are they provided because of the provisions of Ga. Code Ann. §32-605a. The Hearing Officer, therefore, concludes that the Local System does not have a program available for three and four year olds and is not required to provide a program for the Student.

Based upon the foregoing findings and conclusions, the Hearing Officer is of the opinion the Regional Hearing Officer reached the right conclusions in deciding that the

Local Board does not have to provide speech therapy for the Student. The Hearing Officer, therefore, recommends that the decision of the Regional Hearing Officer be sustained.

L. O. Buckland

L. O. BUCKLAND
Hearing Officer